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July 15, 2002

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Advisory Opinion No. 02-2002

Dear Mr. Sheridan:

Your request for an advisory opinion on behalf of the Republican National Committee was considered by the Commission at its meeting of July 11, 2002, and the Commission has directed me to issue this response. The Republican National Committee (hereafter, RNC) is a national political party committee filing reports in New Jersey as a continuing political committee under the name Republican National State Elections Committee (hereafter, RNSEC).

You have asked what reporting and contribution limit requirements would arise under the Campaign Contributions and Expenditures Reporting Act, N.J.S.A 19:44A-1 et seq. (hereafter, the Reporting Act), if the RNC were to pay for some or all of the legal expense incurred collectively by the Republican State Committee and Republican legislative leadership committees for litigation undertaken by them in April, 2001 to challenge the apportionment of legislative districts in this State made by the State Apportionment Commission following the 2000 decennial census.

Submitted Facts

As initially submitted on March 27, 2002, the RNC asked whether or not it could pay approximately \$100,000 of legal expenses "incurred by New Jersey republicans" arising out of litigation undertaken in the spring of 2001 to challenge the apportionment of legislative districts in this State, and if so whether or not those payments would be subject to reporting or contribution limits under the Reporting Act. Included as Exhibit A of the request was a copy of the Verified Complaint filed in Page v. Bartels, a case brought in the federal District Court for the District of New Jersey. The plaintiffs included several minority voters in several legislative districts and the State Senate Republican Majority (hereafter, SRM) and Assembly Republican Majority (hereafter, ARM). SRM and ARM are registered as and file reports with the

Commission as legislative leadership committees of the Republican Party leadership of the New Jersey Senate and Assembly, respectively.

The suit, Page v. Bartels, challenged the legislative apportionment plan adopted by the State Apportionment Commission, alleging violation of the Voting Rights Act, and of the Fourteenth and Fifteenth Amendments. The District Court denied the requested relief to set aside the apportionment plan, but on June 25, 2001, the Third Circuit Court of Appeals vacated the denial and remanded the opinion, holding that a three-judge panel should have heard the case. However, the Court of Appeals did not grant plaintiffs any interim relief, and apparently the suit was not pursued further. The Third Circuit opinion is reported at Page v. Bartels, 248 F.3rd 175 (3rd Cir. 2001).

You wrote that the RNC is an unincorporated association created by the rules of the Republican Party adopted on July 31, 2000, by the Republican National Convention, and it is the governing body of the Republican Party at the national level, subject to direction from the Republican National Convention.

The Commission notes that the RNC has registered as and currently files quarterly reports (Forms R-3) in New Jersey as a continuing political committee (CPC), under the name Republican National State Elections Committee (hereafter, RNSEC). As was noted in a prior advisory opinion to the RNC (Advisory Opinion No. 07-2001), the RNSEC filed a Continuing Political Committee-Registration Statement with the Commission on April 10, 1995, in which the RNSEC described itself as the “National Party Committee organized to assist candidates in various states and Republican organizations.” Based upon this description, the Commission has considered the RNSEC as the “national committee of a political party,” as that term is defined at N.J.A.C. 19:25-1.7, and that the RNC and the RNSEC have identical standing for the purposes of this response. Accordingly, references in this opinion to the RNC include its New Jersey reporting arm, the RNSEC.

Because the initial request presented by the RNC provided only limited information concerning the identity of the person or entity that incurred the legal expenses that were the subject of the request, the Commission asked the RNC to amplify its fact record by providing, among other facts, the name of the entity that incurred the obligation to pay those fees. By letter dated April 12, 2002, you responded that a legal services agreement was entered into between the SRM and the law firm of Pitney, Hardin, Kipp & Szuch (hereafter, Pitney, Hardin). However, you added, “...there was an alleged oral understanding to share the costs associated with the legal challenge with the Assembly Republican Majority (ARM) and the Republican State Committee (RSC).”

You further wrote in your April 12th correspondence that there is no precise formula for the amount of the legal fees owing for the legal representation in the Page v. Bartels case. According to the amplified fact record in your letter, the RNC has not received any invoice for legal fees, and presumably the obligation to pay them arose on or about April 12, 2001, the date on which the Verified Complaint was filed. You noted that the SRM has reported in reports filed with the Commission that it made payments to Pitney, Hardin in the amount of \$100,000. The Commission observes that the SRM reported on its fourth quarterly report (Form R-3) for calendar year 2001 making two payments of \$50,000 each to that law firm on October 30, 2001, and on November 13, 2002, and these payments apparently are the payments to which you are referring. You further noted that the reports filed by SRM and ARM do not show any outstanding obligation to Pitney, Hardin for legal services. Finally, you wrote that the RNC has

not paid any legal fees owing to Pitney, Hardin to date, and has not entered into any agreement to pay them.

This request was initially considered by the Commission at its May 20, 2001 meeting; see Public Session Minutes, May 20, 2002, item 6. Commission action was deferred to the Commission's July 11, 2002 public meeting, with your consent on behalf of the RNC. Accordingly, your letter dated June 6, 2002, containing legal argument, was circulated to and considered by the Commission as part of the record of this request. In that letter, you stated that the RNC has no objection to disclosure reporting of the legal fees that are the subject of this request, but asserts that the RNC payments should not be considered as contributions.

Questions Presented

1. Can the Republican National Committee (RNC), registered and filing reports in this State as a continuing political committee under the name Republican National State Elections Committee (RNSEC), pay for some or all of the Pitney, Hardin legal expenses described above without those payments being subject to reporting under the Act?

2. Would payment by the RNC of the Pitney, Hardin legal expenses constitute an "in-kind" contribution to a candidate, a legislative leadership committee, or a State political party committee?

3. Would payment by the RNC of the Pitney, Hardin legal expenses be subject to contribution limits and, if so, what would those limits be?

Commission Responses

1. In regard to the obligation of the RNC to report any payment of the Pitney, Hardin legal fees, the Act mandates that a continuing political committee (CPC) filing quarterly reports shall report "...all expenditures made, incurred or authorized by it during the period whether or not such expenditures were made, incurred or authorized in furtherance of the election or defeat of a candidate, or in aid of the passage or defeat of any public question or to provide information on any candidate or public question...." See N.J.S.A. 19:44A-8b(2). The above quoted text of the Act explicitly provides that all expenditures of a CPC, regardless of the existence or absence of any linkage to a candidate or candidates in any particular election be subject to reporting as expenditures of the CPC. The obligation to report a CPC expenditure arises not because that expenditure furthers the election or defeat of any particular candidate or candidates, but because it furthers the objectives of the CPC itself.

The Commission finds that there are innumerable examples of reportable expenditures by a political party committee, or a CPC, that cannot be directly linked to any particular candidacy. Such reportable expenditures would include, for example, organizational or promotional expenditures incurred to operate or promote the growth of the political party or CPC entity, or expenditures for non-candidate specific communications to membership or the general public. These expenditures do not necessarily inure to the direct benefit of any particular candidate, but nevertheless they are expenditures that make it possible for the political party committee or the CPC to function and ultimately to make contributions that do aid or promote candidates they support. The contemplated RNC litigation expenditure that is the subject of this request falls within this category of expenditure. It may not inure to the direct benefit of any particular candidate, but the expenditure is made because the RNC perceives that it will advance the RNC's election objectives in this State.

Accordingly, if the RNC makes payments to pay for all or part of the legal expenses that are the subject of this request, those payments are reportable expenditures under the Reporting Act.

2. The term “in-kind contribution” is defined in pertinent part to mean a contribution of goods or services received by a candidate, a legislative leadership committee, or a political party committee, which contribution is paid for by an entity other than the recipient committee; see N.J.A.C. 19:25-1.7.

While the Commission recognizes that the ultimate determination of the geographic composition of legislative districts has inherent political consequences for all potential candidates, nothing in the facts you have submitted suggests that the Page v. Bartels litigation was undertaken to promote any specific candidate, or group of candidates, in a specific election. The individuals named as plaintiffs were registered voters, but none were candidates in the 2001 primary election. Further, nothing contained in the pleadings in the Verified Complaint you submitted seeks any relief for any particular candidate, and therefore is in contrast with, for example, litigation undertaken for a recount or to contest the election of a candidate, which litigation would generate candidate reportable legal fees, see N.J.A.C. 19:25-12.11. Instead, the relief sought in Page v. Bartels would have enjoined implementation of the apportionment map adopted by the New Jersey Apportionment Commission, a result that would have affected all candidates in all State legislative elections until the next decennial census. Absent some showing of some particular nexus of that litigation to a specific candidate, or group of candidates, in a specific election, and the consent, cooperation and coordination with that candidate, or group of candidates, in undertaking and obliging themselves to pay for the litigation, there does not appear to be any basis for finding the existence of an “in-kind” contribution to any candidate.

The RNC has advised the Commission that the obligation to pay for the Pitney, Hardin legal fees is subject to “an alleged oral understanding to share costs associated with the legal challenge with the Assembly Republican Majority (ARM) and the Republican State Committee (RSC).” Further, the Senate Republican Majority (SRM) reported in 2001 making a total of \$100,000 in payments to Pitney, Hardin, which payments the Commission assumes for the purpose of this response were in full or partial payment for Pitney, Hardin legal representation of the SRM in the Page v. Bartels litigation.

The term “contribution” is defined in the Commission regulations to include pledges or other commitments or assumptions of liability on behalf of a political party committee such as the RSC, or on behalf of legislative leadership committees such as the ARM and SRM; see N.J.A.C. 19:25-1.7, Definitions. Accordingly, any payment made directly to Pitney, Hardin by the RNC, or any assumption of liability assumed by the RNC in favor of Pitney, Hardin, for any obligation of the ARM, the SRM, or the RSC, to pay Pitney, Hardin for the legal representation that firm provided in the Page v. Bartels litigation would constitute an “in-kind contribution” by the RNC to those entities.

While the facts submitted do not definitely provide the Commission with sufficient information to determine whether the State political party committee or one or both of the legislative leadership committees incurred an entire or partial obligation to pay for the litigation expense, the Commission recognizes that the Page v. Bartels litigation was undertaken to advance the political objectives of the RSC and the two Republican Party legislative leadership committees, ARM and SRM, collectively. Accordingly, the RNC may apportion any “in-kind

contribution” it makes to pay for the litigation expenses among those three committees in any amount that reasonably reflects each committee’s portion of the litigation expense as long as the amount of the resulting “in-kind contribution” to any one of the three committees does not exceed the applicable contribution limits discussed below.

3. The Act limits the amount that a national committee of a political party may contribute to a State political party committee to \$72,000 in a calendar year; see N.J.S.A. 19:44A-11.4a(2), as adjusted by N.J.S.A. 19:44A-7.2, and see N.J.A.C. 19:25-11.2, Contribution limit chart. Therefore, the aggregate sum of any payments made in this calendar year by the RNC, or the CPC it has established, the RNSEC, for the litigation expenses that are the subject of this request, and any other contribution or contributions made in the same calendar year to the RSC by the RNC, or RNSEC, may not in the aggregate exceed the sum of \$72,000.

The Act also limits the amount that a CPC may contribute to a legislative leadership committee to \$25,000 in a calendar year; see P.L. 2001, c. 384, section 2, effective Jan. 8, 2002, amending N.J.S.A. 19:44A-11.4. For the purposes of contributions to New Jersey committees other than a State political party committee, the RNSEC is subject to the contribution limits applicable to CPCs because the RNSEC meets the statutory definition of a CPC at N.J.S.A. 19:44A-3n, and is registered as and files reports as a CPC. The Commission notes that its regulation applying contribution limits to various contributing entities has consistently indicated that a national political party committee is subject to the same limits as are applicable to a CPC, with the exception of the \$72,000 limit in a calendar year to a State political party committee, see N.J.A.C. 19:25-11.2, Contribution limit chart. Therefore, the aggregate sum of any payments made in this calendar year by the RNC, or the CPC it has established, the RNSEC, for the litigation expenses that are the subject of this request, and any other contribution or contributions made in the same calendar year to the ARM may not in the aggregate exceed the sum of \$25,000. Similarly, the aggregate sum of any payments made in this calendar year by the RNC, or the CPC it has established, the RNSEC, for the litigation expenses that are the subject of this request, and any other contribution or contributions made in the same calendar year to the SRM may not in the aggregate exceed the sum of \$25,000.

The Commission notes that you have brought to the Commission’s attention two advisory opinions issued by the Federal Election Commission (FEC) to the effect that costs associated with the reapportionment decisions of a State legislature are not subject to the requirements of the Federal Election Campaign Act of 1971; FEC Advisory Opinions No. 1981-35; and No. 1982-14. However, those opinions do not appear to address committees that are required under the FECA to report all expenditures, as is the case under the Reporting Act for a CPC. Further, those opinions interpret federal statutes and are not controlling over New Jersey’s regulatory statutes over campaign finance activity for State elections.

You have also cited this Commission’s decision in People for Whitman v. Florio, 93 N.J.A.R. 2d (ELE) 12, PF 03-93(G), and Advisory Opinion No. 15-1984, as authority for the proposition that a television advertisement concerning prevention of child abuse in which an incumbent Governor who was also a candidate for reelection appeared did not give rise to a reportable event for that incumbent gubernatorial candidate. However, those authorities concern advertising expenses presumably paid for by the State of New Jersey, or provided as a public service. They do not concern litigation expenses undertaken and assumed by a legislative leadership committee, or a State political party committee, both of which entities are required to report all expenditures they make, or obligations they assume; see N.J.S.A. 19:44-8c.

Thank you for submitting this request, and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____
GREGORY E. NAGY
Legal Director